

Date: December 18, 2014

To: Thomas J. Bonfield, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From: Marvin G. Williams, Director of Public Works
Subject: Telecommunication License Agreement with Earthlink Carrirer, LLC

Executive Summary

Earthlink Carrirer, LLC proposes to maintain Telecommunications Facilities within the City limits. A license agreement is required when private utilities, such as conduits and fiber optic cable, are installed and maintained in the public right-of-way within the City limits. Pursuant to Section 62-56 of the City of Durham Code of Ordinances, Earthlink Carrirer, LLC seeks approval of the Telecommunication License Agreement from City Council.

This Telecommunications License would permit Earthlink Carrirer, LLC, upon obtaining required approvals and permits, to repair its Telecommunications Facilities in those portions of the public right-of-way approved by the City.

Recommendation

To authorize the City Manager to enter into a license agreement with Earthlink Carrirer, LLC for installation and maintenance of Telecommunications Facilities within the public right-of-way located within the City limits.

Background

Earthlink Carrirer, LLC proposes to maintain Telecommunications Facilities within the City limits. Per Section 62-56 Franchises and Licenses of the City of Durham Code of Ordinances, a Telecommunication License may be granted to construct and maintain equipment that transmits/communicates between points specified by the User and provides services that are regulated under the Federal Telecommunications Act of 1996 and are not subject to a franchise agreement. A separate excavation permit from the City's Public Works Department is required for the actual construction of the Telecommunication Facilities.

BTI Telecom Corp. installed approximately 9.5 miles of fiber in the 1990s (see attached exhibit). The company merged with ITC^Deltacom, Inc. in 2013 and became Earthlink Carrirer, LLC. Earthlink Carrirer, LLC has agreed to the terms of the Telecommunication License Agreement. The initial scope of work proposed by Earthlink Carrirer, LLC includes maintenance of existing fiber optic cable. Prior to initiating construction, the Licensee shall first obtain an excavation permit from the City's Public Works Department.

The Telecommunication License Agreement and the required performance bond are perpetual in nature. The Telecommunication License Agreement can be terminated if a superseding

Telecommunications Franchise or license is executed by the City and the Licensee or if it's forfeited. The City reserves the right to declare a forfeiture of the Telecommunication License Agreement in the event that the Licensee does not comply with any material provision of the Telecommunication License Agreement and does not fix such non-compliance after been notified by the City.

The City is responsible for ensuring that current and future providers of Telecommunications Services will have access to the public right-of-way in accordance with Section 253 of the Federal Communications Act, 47 U.S.C. § 253. This License does not confer an exclusive right or privilege to occupy or use the public right-of-way for delivery of Telecommunications Service. The City reserves all rights to use the public right-of-way for any purpose not prohibited by law, including the provision of Telecommunications Services, and all rights to grant authorizations to use the public right-of-way to any other providers of Telecommunications Services.

Issues/Analysis

Any feature in the right-of-way has the potential to pose a hazard to the public, and to increase liability to the licensee. To the extent not prohibited by law, the Licensee shall defend, indemnify, and save harmless the City from and against all Charges to the extent that they arise from, in connection with, or out of this License, or as a result of Licensee's action or inaction in constructing, operating, or maintaining its Telecommunications Facilities in the City of Durham, or from, in connection with, or out of any claim brought by any reseller, lessee or other user of Licensee's Telecommunications Facilities, as a result of any damage to Licensee's Telecommunications Facilities by the City that occurs as a result of or in connection with any public improvements.

Alternatives

City Council can choose not to approve the request.

Financial Impact

The Licensee will assume the cost of installation, maintenance, and repair of the Telecommunications Facilities, including the cost of repairs to the street and pavement associated with the work.

SDBE Summary

The SDBE Summary is not applicable for this update.